(1) Supreme Court, U.S.
FILED

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Docket Number: _____ OFFICE OF THE CLERK

THE UNITED STATES SUPREME COURT

Shelly England Lucas,
Petitioner
v.
Central Intelligence Agency (CIA),
United States Department of Justice (DOJ),
The Estate of William Casey, Robert Gates, John Deutch,
George Tenet, The Estate of William French Smith, Edwin Meese,
Richard Thornburgh, Janet Reno, Does I-XXX, and
The United States of America,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

PETITION FOR WRIT OF CERTIORARI

Shelly England Lucas, Petitioner, Pro Se
Assisted by Consolidation Counsel Anita E. Belle, Esq., pending admission to this Bar
5219 Yanceyville Road, Brown Summit, NC 27214
(877) 662-6600 ext. 672

Questions for Review:

Whether a substituted Plaintiff who filed and served the First Amended Complaint before a responsive pleading is served, is a party with standing to invoke the jurisdiction of the court?

Whether or under what circumstances is a First Amended Complaint a matter of right?

Whether dismissal of Petitioner's appeal and first amended complaint, in disregard to various Federal Rules of Civil Procedure, denied Petitioner the due process guaranteed by the 5th and 14th Amendments to the U.S. Constitution?

Whether the appellate court and district court erred in concluding the action is frivolous without citing in particularity how the original or amended complaints lacked an arguable basis in law or fact?

List of All Parties to the Proceedings

Michelle D. Adams, Plaintiff on Original Complaint.

Shelly England Lucas, Petitioner, Appellant, and substituted Plaintiff on the first amended complaint that was served on the Defendants.

Anita E. Belle, Consolidation Counsel for the Nicaraguan Contras' Narcotics Trafficking Litigation, MDL #1331, U.S. District Court for the Northern District of Florida, Gainesville Division.

Central Intelligence Agency (CIA), United States Department of Justice (DOJ), the Estate of William Casey, Robert Gates, John Deutch, George Tenet, the Estate of William French Smith, Edwin Meese, Richard Thornburgh, Janet Reno, Does I-XXX, and the United States of America, Defendants/Appellees/Respondents.

Corporate Disclosure Statement

Neither the Petitioner, Shelly England Lucas, or consolidation counsel, Anita E. Belle, are owners of a parent corporation or publicly-held company that owns 10% of more of any corporation's stock.

Table of Contents

Section	Page
Questions Presented for Review	2
Parties	3
Corporate Disclosure Statement	3
Reports of Opinions in Case	5
Jurisdictional Statement	5
Constitutional & Other Provisions in Case	5
Statement of the Case	6
Basis for Federal Jurisdiction	9
Contentions in Support of Petition	9
Table of Cited Authorities	13
Appendix 1	14
Appendix 2	
Signature Page	

Citations of Official and Unofficial Reports of the Opinions and Orders Entered in the Case by Courts

Unpublished per curiam opinion of the United States Court of Appeals for the Fourth Circuit, Docket #00-1301, In re: Shelly England Lucas, Appellant, Michelle D. Adams, Plaintiff, v. Central Intelligence Agency (CIA) et al, Defendants-Appellees. (See Appendix 2.)

Basis of Jurisdiction of the U.S. Supreme Court

On July 25, 2000, the United States Court of Appeals for the Fourth Circuit decided the underlying case and mandated dismissal by an unpublished per curiam opinion.

The Supreme Court has discretionary jurisdiction to review on a writ of certiorari based upon Title 28, Section 1254, Subsection (1) of the United States Code, which states: "Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

Constitutional Provisions, Treaties, Statutes, Ordinances, and Regulations Involved in the Case

Amendment V of the Constitution of the United States declares,

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or an indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of

law; nor shall private property be taken for public use, without just compensation."

Section 1 of the Amendment XIV of the Constitution of the United States declares:

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Please see Appendix 1 for the full text of the following:
Federal Rule of Civil Procedure 4(m),
Federal Rule of Civil Procedure 6(b),
Federal Rule of Civil Procedure 15(a),
Federal Rule of Civil Procedure 20(a), and
Federal Rule of Civil Procedure 21.

Statement of the Case

On May 6, 1999, Plaintiff Michelle D. Adams, assisted by Florida attorney Anita E. Belle, filed an action in the U.S. District Court for the Middle District of North Carolina and paid the applicable filing fee. The suit alleged that Adams represented one of two proposed classes. Adams' class consisted of African-Americans harmed by U.S. agencies' alleged complicity in distributing imported narcotics into predominantly African-American communities. The second proposed class consisted of those who did not reside in predominantly African-American communities but who have experienced harm which allegedly would not have occurred but for the complicity of the U.S. agencies in distributing imported narcotics into predominantly African-American communities. No proposed class representative for this second class was named in the original complaint.

Prior to the expiration of time to serve the defendants, as dictated in Rule 4(m) of the Federal Rules of Civil Procedure, Adams filed her first and only motion requesting an extension of

time until November 15, 1999 to amend the complaint and serve the defendants. Her motion, pursuant to Rule 6(b) of the Federal Rules of Civil Procedure, cited various grounds which included problems in finding a sponsor for Belle's pro hac vice application for admission to the Bar of the Middle District of North Carolina and anticipation that Belle would move to consolidate Adam's action with similar actions in other district courts. The magistrate denied Adams motion for extension of time, citing lack of good faith in bringing the motion, and ordered Adams to serve the defendants by an earlier specified date.

When Adams failed to serve the defendants by the earlier date, the magistrate recommended to the district court that the action be dismissed. Objections to the magistrate's recommendations were filed. On or around November 15, 1999, the clerk of court for the U.S. District Court for the Middle District of North Carolina, Greensboro Division, date stamped as received 175-plus pages of a hand-delivered copy of the notice of the motion for consolidation, a motion for consolidation, brief, appendix, and certificate of service. Later that same week, the clerk of court for the U.S. District Court for the Middle District of North Carolina, Greensboro Division, also date stamped the return receipt of a certified mailing containing an original of the afore-mentioned 175-plus pages of a notice of the motion for consolidation, a motion for consolidation, brief, appendix, and certificate of service.

On November 15, 1999, the first amended complaint was filed and served on the defendants. The first amended complaint substituted Shelly England Lucas as the plaintiff, proposing Lucas to be the representative of the second proposed class. This second class consisted of those who did not reside in predominantly African-American communities but alleged that members of the second class would not have experienced harm but for the government's complicity in distributing imported narcotics into predominantly African-American neighborhoods. The first amended complaint also added the United States as a defendant. Belle assisted Lucas, an indigent senior citizen with only a grade-school education, in preparing and serving the first amended complaint.

Although received in October, 1999, the consolidation motion was filed by the clerk of the Judicial Panel for Multidistrict

Litigation on November 30, 1999 as the Nicaraguan Contras' Narcotics Trafficking Cases, MDL #1331. Of note is that when the clerk of court for the U.S. District Court in the Middle District of North Carolina sent the certified record of the Adams & Lucas case to the U.S. Circuit Court of Appeals for the Fourth Circuit, neither set was filed of the 175-plus pages of a notice of the motion for consolidation, a motion for consolidation, brief, appendix, and certificate of service.

The U.S. District Court for the Middle District of North Carolina dismissed without prejudice. Rather than addressing the issue of joinder, the district court dismissed on the basis of claiming that Lucas was not a party to the case. Lucas, again assisted by Belle, filed a timely appeal asserting prejudice because without the ability to relate back to the date of Adams' filing of the original complaint, some or all of his claims risked dismissal via an anticipated statute of limitations' affirmative defense. For the appeal, Petitioner moved to proceed in forma pauperis.

Petitioner's appeal included a motion for sanctions against the Federal Defendants. This motion contained 350 pages of documented "coincidences" that threatened to sabotage the plaintiffs and their attorney, Anita E. Belle, in the instant case and the consolidated lawsuits, such "coincidences" inuring to the benefit of the Federal Defendants. One "coincidence" raised in the sanctions motion noted that the certified record from the clerk of the North Carolina district court failed to file either set of the 175 paged notice of motion for consolidation, motion, brief, appendix, and certificate of service. The motion for sanctions alleged that the clerk of court's failure to file either set of the consolidation package prejudiced the plaintiffs by preparing an erroneous certified record that strategically neglected to demonstrate Adams' good faith in her first and only motion for extension of time. The motion for sanctions against the Federal Defendants requested an oral hearing during which it was requested that testimony be taken to ascertain whether the original plaintiff, Michelle D. Adams, was somehow intimidated from further participating as a plaintiff in the case.

The U.S. Circuit Court for the Fourth Circuit rendered an unpublished and non-binding per curiam opinion. The appeal was dismissed for lack of jurisdiction, the appellate court stating that because Lucas was not a party in the original pleading, nor an

intervenor in the district court proceedings, then Lucas did not have standing to appeal. The appellate court further stated that Lucas failed to show an adequate interest in the cause litigated, the appellate court echoing the district court's conclusion that the action was frivolous. Both courts failed to articulate how the original or amended complaints lacked an arguable basis in law or fact so as to render the action frivolous. With the action summarily rendered frivolous, Petitioner's application to proceed in forma pauperis was denied as was his other motions and arguments.

Basis for Federal Jurisdiction in the Court of First Instance, the U.S. District Court for the Middle District of North Carolina.

Petitioner alleges that the court of first instance had jurisdiction pursuant to 28 U.S.C. 1331, the statute which confers jurisdiction to the district courts for federal questions involving interpretation of federal statutes, a few of which are as follows:

28 U.S.C. 1343 (deprivation of civil rights); 28 U.S.C. 1361 (mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiffs); 28 U.S.C. 1346 (federal tort claims); Article III, Section 2 of the United States Constitution; and North Carolina statutes and case law regarding negligence, negligence per se, conspiracy or civil RICO, and intentional torts, an example of which is North Carolina General Statutes §75D-8 regarding available civil RICO remedies; and the United States' Treaty with the United Nations' Convention on the Prevention and Punishment of the Crime of Genocide.

Contentions in Support of This Petition for a Writ of Certiorari

Rule 10(a) of the Rules of the Supreme Court of the United States finds that character of the reasons the Court considers in granting a petition for a writ of certiorari is as follows:

> "A United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power."

Petitioner argues that the appellate court has indeed departed from the accepted and usual course of judicial proceedings or has sanctioned such a departure by a lower court, thereby invoking the exercise of the Supreme Court's supervisory power. In support of this contention, Petitioner argues that the accepted and usual course of judicial proceedings is set forth by the Federal Rules of Civil Procedure. Petitioner further argues that the district court departed from numerous rules of civil procedure and that by dismissing the appeal, the appellate court sanctioned such departure of the lower court. Accordingly, the Petitioner argues that Petitioner was denied both procedural and substantive due process and was denied equal protection of the laws by the sanctioned disregard of the Federal Rules of Civil Procedure.

Petitioner contends that in accordance with Rule 15(a) of the Federal Rules of Civil Procedure, Petitioner filed a first amended complaint before the Defendants were served. Petitioner argues that given the Defendants had not been served, no responsive pleading had been served, thus rendering Petitioner's filing of a first amended complaint as a matter of course. Some appellate courts have found that a right to amend exists if the plaintiff has paid the filing fee. See Clark v. Ocean Brand Tuna, 974 F.2d 48, 50 (6th Circuit 1992) and Butler v. Leen, 4 F.3d 772, 773 (9th Circuit 1993). In the instance case, given that the filing fee was paid, Petitioner argues that the filing of a first amended complaint was a matter of right.

Federal circuits differ as to whether dismissal cuts off Plaintiff's right to amend. See Moore's Federal Practice-Civil, §15.12[1]. The 4th Circuit has not rendered an opinion on this question and could have certified this question to the Court if guidance on this question would be pertinent to the instant case.

Rule 20(a) of the Federal Rules of Civil Procedure allows

all persons to join in an action as plaintiffs if they assert a right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if questions of law or fact common to all these persons will arise in the action. The original complaint filed by Adams alleged a class action containing at least two classes, the first of which Adams was alleged to be the class representative. The first amended complaint filed by the Petitioner alleged the Petitioner to be the class representative of the second class asserted in the original complaint. Petitioner argues that because the original complaint alleged a second class, as the proposed class representative for this class, his joinder was not only permissible but foreseeable, particularly given that his first amended complaint alleged the same series of transactions or occurrences and similar questions of law and fact as the original complaint. Petitioner further argues that the Defendants were not prejudiced by his joinder because the Defendants had not been served the original complaint but were served Petitioner's first amended complaint.

Neither the district court's order or the appellate court's opinion made the requisite two-pronged inquiry in analyzing whether Petitioner was misjoined as a party. See Coughlin v. Rodgers, 130 F.3d 1348, 1351 (9th Circuit 1997). Without either court articulating a finding of misjoinder, Petitioner argues that Rule 20(a) of the Federal Rules of Civil Procedure permits his joinder in the action and the action should not have been dismissed.

Rule 21 of the Federal Rule of Civil Procedure specifically prohibits dismissal of an action due to misjoinder of parties. In the 4th Circuit, misjoinder occurs when asserted claims do not arise out of the same transaction or occurrence or do not present common questions of law or fact. See Jonas v. Conrath, 149 F.R.D. 520, 523 (S.D. W.Va. 1993). In comparing Rules 15 and 21, Health Research Group v. Kennedy, 82 F.R.D. 21, 29 (D.D.C. 1979) found:

> "Both rules invest the court with broad discretion to grant leave to add or drop a party and in both instances the court's decision is guided by the related considerations of the timeliness and prejudice to the opposing party. Substitution of one plaintiff for another has been found to be permissible under either rule."

Petitioner emphasizes that neither the district or appellate courts made a specific finding as to misjoinder of Petitioner as a plaintiff under Rules 15(a) and 20(a). However, had either court made such a determination, Rule 21 functions to support Petitioner's contention that he may be added as a party at any stage of the action. Petitioner argues that the lower courts erred in ruling that Petitioner was not a party to the action merely because he was not named in the original pleadings. Furthermore, Petitioner argues that Rule 21 provides for severance to serve as the appropriate remedy for any alleged misjoinder, thereby making dismissal of the action improper.

In dismissing the appeal for lack of jurisdiction, the appellate court relied upon Davis v. Scott, 176 F.3d 805, 807 (4th Circuit 1999), stating, "It is well established that 'persons who are neither original parties to, nor intervenors in, district court proceedings ordinarily may not appeal a judgment of the district court.'" However, the facts in the Davis case differ substantially from the facts in the instant case. In Davis, the wife of a federal prisoner applied for habeas corpus relief "on behalf of" her husband, but not in the capacity of "next friend". The prisoner never joined the wife's application, hence her application was dismissed without prejudice to the prisoner filing his own application for habeas corpus relief. The prisoner appealed. Citing that the Davis prisoner lacked standing to appeal, the cited appeal was dismiss for lack of jurisdiction.

The appellate court stated that Kenny v. Quigg, 820 F.2d 665, 667 (4th Circuit 1987) poses an exception to a non-party's lack of standing when the person "ha[s] an interest in the cause litigated and ... [has] participated in the proceedings actively enough to make him privy to the record." The appellate court reasoned that in the instant case, the Petitioner failed to show an adequate interest in the cause litigated, 'particularly in light of the frivolous nature of this action.'

Petitioner argues that his corroboration with consolidation counsel Belle and having his son-in-law hand-deliver one copy of the 175-plus pages of a notice of the motion for consolidation, a motion for consolidation, appendix, and certificate of service to the clerk of the district court; hand-deliver the first amended complaint for filing; and hand deliver executed summons for service upon the defendants showed adequate interest in the cause litigated.

Petitioner further contends that the appellate and district courts conclusion that the appeal was frivolous without articulating the requisite analysis of how the fee-paid complaint lacked an arguable basis in either law or fact contradicts the precedent this Court established in Neitzke v. Williams, 490 U.S. 319, 325 (1989). Accordingly, Petitioner argues that the decisions and opinions of the lower courts denied him the due process and equal protection guarantees provided in the 5th and 14th Amendments to the U.S. Constitution.

In conclusion, Petitioner argues that he had standing to appeal, thereby invoking the jurisdiction of the appellate court. Accordingly, Petitioner contends that the appellate and district courts erred in denying him leave to proceed in forma pauperis, his motion for counsel, his motion for sanctions against the Federal Defendants, and dispensing with oral arguments. Consequently, Petitioner requests a writ of certiorari to brief the Court on the merits of reversing and remanding with instructions to the lower courts.

Table of Cited Authorities

Butler v. Leen, 4 F.3d 772, 773 (9th Circuit 1993), cited on page 10.

Clark v. Ocean Brand Tuna, 974 F.2d 48, 50 (6th Circuit 1992), cited on page 10.

Coughlin et al v. Rogers et al, 130 F. 3d 1348, 1351 (9th Circuit, 1997), cited on page 11.

Davis v. Scott, 176 F.3d 805, 807 (4th Circuit 1999), cited on page 12.

Health Research Group v. Kennedy, 82 F.R.D. 21, 29 (D.D.C. 1979), cited on page 11.

Jonas v. Conrath, 149 F.R.D. 520, 523 (S.D. W.Va. 1993), cited on page 11.

Kenny v. Quigg, 820 F.2d 665, 667 (4th Circuit 1987), cited on page 12.

Moore's Federal Practice-Civil, §15.12[1], cited on page 10.

Neitzke v. Williams, 490 U.S. 319, 325 (1989), cited on page 13.

Amendment V of the Constitution of the United States, referred to on pages 10 and 13.

Section 1 of Amendment XIV of the Constitution of the United States, referred to on pages 10 and 13.

Appendix 1

The constitutional provisions, treaties, statutes, ordinances, and regulations involved in the case are as follows:

Federal Rule of Civil Procedure 4(m) states,

> "Time Limit for Service. If service of the summons and the complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for an appropriate period. This subdivision does not apply as to service in a foreign country pursuant to subdivision (f) or (j)(1)."

Federal Rule of Civil Procedure 6(b) states,

> "Enlargement. When by these rules or by a notice given thereunder or by an order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 50(b) and (c)(2), 52(b), 59(b), (d), and (e), 60(b), and 74(a), except

to the extent and under the conditions stated in them."

Federal Rule of Civil Procedure 15(a) states,

"Amendments. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed on the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise, a party may amend the party's pleadings only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be longer, or as the court otherwise orders."

Federal Rule of Civil Procedure 20(a) states,

"Permissive Joinder. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons (and any vessel, cargo, or other property subject to admiralty process in rem) may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, or occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more plaintiffs according to their respective rights for relief, and against one or

> more defendants according to their respective liabilities."

Federal Rule of Civil Procedure 21 regarding Misjoinder and Non-joinder of Parties states,

> "Misjoinder of parties is not grounds for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or on its own initiative at any stage of the action and on such terms as are just. Any claim against any party may be severed and proceeded with separately."

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

In Re: SHELLY ENGLAND LUCAS,
Appellant,

MICHELLE D. ADAMS,
Plaintiff,

v.

CENTRAL INTELLIGENCE AGENCY (CIA); UNITED STATES DEPARTMENT OF JUSTICE (DOJ); WILLIAM CASEY, Estate of; ROBERT GATES; JOHN DEUTCH; GEORGE TENET; WILLIAM FRENCH SMITH, Estate of; EDWIN MEESE; RICHARD THORNBURGH; JANET RENO; I-XXX DOES; UNITED STATES OF AMERICA,
Defendants-Appellees.

No. 00-1301

Appeal from the United States District Court
for the Middle District of North Carolina, at Durham.
William L. Osteen, District Judge.
(CA-99-371-1)

Submitted: July 13, 2000

Decided: July 25, 2000

Before WIDENER, LUTTIG, and TRAXLER, Circuit Judges.

Dismissed by unpublished per curiam opinion.

COUNSEL

Shelly England Lucas, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

Shelly England Lucas appeals the district court's order dismissing a civil rights action filed by Michelle D. Adams for failure to show proof of service on the Defendants within the required time period. Lucas filed a notice of appeal, which the district court struck because Lucas is neither a party to the lawsuit nor an attorney admitted to practice law in the district court.

"It is well established that, 'persons who are neither original parties to, nor interveners in, district court proceedings ordinarily may not appeal a judgment of the district court.'" *Davis v. Scott*, 176 F.3d 805, 807 (4th Cir. 1999) (quoting *Kenny v. Quigg*, 820 F.2d 665, 667 (4th Cir. 1987)). An exception exists, however, when the person "ha[s] an interest in the cause litigated and . . . [has] participated in the proceedings actively enough to make him privy to the record." *Id.* (citation omitted, brackets in original). Lucas is neither an original party nor an intervener in this lawsuit. Further, Lucas fails to show that he has an adequate interest in the cause litigated, particularly in light of the frivolous nature of this action. We therefore conclude that Lucas does not have standing to bring this appeal. Accordingly, we deny leave to proceed in forma pauperis, deny Lucas' motion for counsel, deny Lucas' motion for sanctions against the Defendants, and dismiss the appeal for lack of jurisdiction. We dispense with oral argument because the facts and legal contentions are adequately presented in the

materials before the court and argument would not aid the decisional process.

DISMISSED

Respectfully submitted,

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